

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Armana J Bellow,

Plaintiff(s),

vs.

Clark County Government,

Defendant(s).

2:23-cv-01218-APG-MDC

Order

Pro se plaintiff Armana J. Bellow filed two motions, a motion for relief (ECF No. 9) and a motion for trial (ECF No. 14). Plaintiff also filed an application to proceed in forma pauperis. ECF No. 10. I deny the motion for relief (ECF No. 9) and the application to proceed IFP (ECF No. 10) as moot. I deny the motion for trial, which I liberally construe as a motion for leave to amend with a demand for a jury trial (ECF No. 14) as unnecessary.

I. Background

This case was previously assigned to Judge Ferenbach, and he sought clarification as to whether the plaintiff was incarcerated. Although plaintiff listed a residential address, his complaint implied he was incarcerated. In addition, the plaintiff did not file an in forma pauperis application.

II. Analysis

“A document filed *pro se* is “to be liberally construed” and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (internal citations omitted). The Prison Litigation Reform Act, “mandates early judicial screening of prisoner complaints and requires prisoners to exhaust prison grievance procedures before filing suit. *Jones v. Bock*, 549 U.S. 199, 202, 127 S. Ct. 910, 914, 166 L. Ed. 2d 798 (2007), citing to 28 U.S.C. § 1915A; see also *Caballero v. Aranas*, No. 3:19-cv-00079-MMD-CLB, 2020 U.S. Dist. LEXIS 113850,

1 at 5 (D. Nev. June 29, 2020, citing to 28 USCS § 1915A(a)). A party may amend its pleading as a matter
2 of course no later than 21 days after serving it. Fed. R. Civ. P. 15(a)(1)(A). "[W]hen a plaintiff files an
3 amended complaint, '[t]he amended complaint supersedes the original, the latter being treated thereafter
4 as non-existent.'" *Rhodes v. Plaintiff*, 621 F.3d 1002, 1005 (9th Cir. 2010) (quoting *Loux v. Rhay*, 375
5 F.2d 55, 57 (9th Cir.1967)). An amended complaint must be "complete in itself, including exhibits,
6 without reference to the superseded pleading." LR 15-1(a).

7 Plaintiff filed a pro se motion for relief. ECF No. 9. Construing the motion for relief liberally, I
8 believe the plaintiff is asking for a motion for relief from Judge Ferenbach's order because plaintiff
9 refers to his "right to sue for relief of complaint and order of collection certificate." ECF No. 9. Judge
10 Ferenbach wanted the plaintiff to (1) state whether he was incarcerated or not and (2) to either pay the
11 filing fee or file an application to proceed in forma pauperis. ECF No. 8.

12 Addressing Judge Ferenbach's inquiry as to whether plaintiff was incarcerated, based on the
13 facts on the record, it appears that plaintiff is not incarcerated. For example, plaintiff states in his newly
14 filed in forma pauperis application that he receives SSI and spends \$1,000 a month on food. It also
15 appears that the plaintiff paid the filing fee in person in the clerk's office. ECF No. 17. These facts,
16 along with the residential address that he listed on the docket, are enough to conclude that plaintiff is not
17 currently incarcerated. Since plaintiff has now paid the filing fee, in full, in cash, and in person, the (1)
18 motion for relief from Judge Ferenbach's order and (2) his previously filed IFP application are now
19 moot. ECF Nos. 9 and 10. Since the plaintiff is not incarcerated and has now paid the filing fee, I do not
20 screen his complaint.

21 Plaintiff also filed a motion for trial (ECF No. 14) which I construe liberally as a request to
22 amend with a demand for jury trial because he captioned the motion "amended complaint" and he filed
23 it simultaneously with his amended complaint (ECF No. 13). The motion for trial and the amended
24 complaint are in fact identical. Since plaintiff has not yet served the original complaint, the motion for
25 leave is unnecessary at this stage because plaintiff could still amend as of right. I warn plaintiff that the

1 amended complaint must be complete in itself, without reference to the previous complaint. Since the
2 motion for trial appears to be plaintiff's amended complaint with a jury trial demand, I deny that motion
3 as unnecessary.

4 ACCORDINGLY,

5 I ORDER that Bellow's *motion for relief* (ECF No. 9) is DENIED AS MOOT.

6 I FURTHER ORDER that Bellow's *application to proceed in forma pauperis* is DENIED AS
7 MOOT.

8 I FURTHER ORDER that Bellow's *motion for trial* (ECF No. 14), which I liberally construed as
9 a motion for leave to amend with a jury trial demand, is DENIED as unnecessary.

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12 **NOTICE**


13 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
14 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
15 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
16 may determine that an appeal has been waived due to the failure to file objections within the specified
17 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).

18 This circuit has also held that (1) failure to file objections within the specified time and (2)
19 failure to properly address and brief the objectionable issues waives the right to appeal the District
20 Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d
21 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).
22 Pursuant to LR IA 3-1, the plaintiff must immediately file written notification with the court of any
23 change of address. The notification must include proof of service upon each opposing party's attorney,
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1 or upon the opposing party if the party is unrepresented by counsel. Failure to comply with this rule may
2 result in dismissal of the action.

3 DATED this 23rd day of January 2024.

4 IT IS SO ORDERED.



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6 Maximiliano D. Couvillier III
7 United States Magistrate Judge
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